

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 444 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge? NO.

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IDRISMIYA MUKHATYAR HAMED SAIYAD

Versus

JOSHI BALVANTRAI NATHALAL

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Appearance:

MR VC DESAI for Petitioner

MR SURESH M TRIVEDI for Respondent No. 1

MR PB BHATT APP for Respondent No. 2

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 12/12/97

ORAL JUDGEMENT

This appeal is filed by the original complainant, Food Inspector of Kapadvanj Municipality under Section 378 (4) of the Code of Criminal Procedure, challenging the legality and validity of the judgment and order passed by the Judicial Magistrate First Class, Kapadvanj,

in Criminal Case No.1758/78, dated 17-9-85, whereby the respondent No.1 original accused came to be acquitted for the offences punishable under Sections 2 (1) A (A) (m), 7 (1) (5), 16 (1) 3-1 (1) of the Prevention of Food Adulteration Act to (be referred to as "the Act" ). The appellant who is the Food Inspector of the Kapadvanj Municipality collected samples of ice-cream from the respondent No.1 on June 14, 1978 and the said samples upon analysis were found to have been adulterated. The appellant after obtaining sanction of the statutory authority filed complaint in the Court of learned Judicial Magistrate First Class, Kapadvanj, which came to be registered as Criminal Case No. 1758/78. The learned Magistrate after appreciating the oral as well as documentary evidence acquitted the respondent No.1 on the ground that sample which was sent to public analyst, intimation of the same was not sent to local health authority as per the provisions of Section 11 (C) (I) of the Act. The second ground on which the learned Magistrate acquitted the respondent No.1 was that sanction which was given by the local health authority under Section 20 of the Act was without application of mind. On these two grounds, the respondent No.1 came to be acquitted by the learned Magistrate which has given rise to filing of the present appeal by the original complainant.

2. Learned advocate Mr. V.C.Desai for the appellant has taken me through the entire evidence on record and submitted that the learned Magistrate has erred in not properly appreciating the evidence which was led by the prosecution. It is submitted that the provisions of Section 11 (C) (I) of the Act are held to be directory by this Court as per the decision reported in 1994 (1) G.L.R., 497. In light of the above decision, it is submitted by the learned counsel for the appellant that as per the above decision, the appellant was not bound to send the intimation to the local health authority. This argument of learned advocate for the appellant is without any merit. Therefore, the learned Magistrate has erred in acquitting the accused on the ground that intimation of sending sample to the public analyst as per the requirement of Section 11 (C) (11) of the Act was mandatory and non-compliance of it to render the prosecution is illegal.

3. Learned counsel for the appellant has further submitted learned Magistrate has acquitted the respondent No.1 on the ground that there was non-application of mind in giving sanction for prosecution also deserves merit. Reading Section 20 of the Act, it cannot be said that

there was non-application of mind by the authority concerned in giving sanction for prosecution. Therefore, the finding of the learned Magistrate that the prosecution has vitiated because non-application of mind on part of the concerned authority in giving sanction deserves to be set aside.

4. However, the learned counsel for the respondent No.1 has vehemently submitted that the learned Magistrate while examining the respondent No.1 under Section 313 of the Code of Criminal Procedure ( the Code for short ) had not complied with the statutory requirements and no specific questions were put to the respondent No.1 with regard to the report of the public analyst. In support of his submission, learned counsel for the respondent No.1 has placed reliance on the unreported judgment of this Court, rendered in Criminal Appeal No.943 of 1986 ( Coram : S.D. Dave, J. ), dated 21-6-94. In this connection, learned counsel for the respondent No.1 has taken me through the statement which was recorded by the Magistrate under Section 313 of Code. It must be stated that learned Magistrate had not put questions to the respondent No.1 with regard to the conclusion of sample and with regard to the report of the public analyst. In my opinion, these questions ought to have been put to him while examining him under Section 313 of the Code. Reading the further statement, it becomes evident that the learned Magistrate has not followed the statutory requirements of Section 313 of the Code. In the circumstances, therefore, it goes to show that there has been departure from the compliance of the statutory requirements under Section 313 of the Code, and, therefore, the order of acquittal deserves to be upheld on this ground only. Learned counsel for the appellant, however, submitted that if the learned Magistrate has not followed the procedure as per the statutory provisions of Section 313 of the Code, the matter should be remanded. In my opinion, the argument of the learned counsel for the appellant deserves to be rejected. The offence in question has taken place in the year 1978 and a long period has lapsed and it would be futile to remand the matter to the Court of the learned Magistrate. In view of these facts and circumstances of the case, the respondent No.1 deserves to be acquitted not on the ground on which the order of acquittal is passed, but on the ground that there was non-compliance of the statutory provisions of Section 313 of the Code.

4. For the foregoing discussions, the judgment and order passed by the learned Judicial Magistrate First Class, dated 17-9-85 in Criminal Case No.1758/78 is

confirmed and the appeal filed by the original complainant is dismissed.

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